

# insurance market conditions report 2011



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## 1. Legislation

### **Bribery Act 2010**

The Bribery Act 2010 came into force on 1 July 2011. Three months prior to that, the Ministry of Justice issued guidance designed to allay concerns about the breadth of the Act and indicating what measures businesses should put in place by way of "adequate procedures" designed to prevent bribery. Whilst that guidance was welcome, it does not change the terms of the Act itself and some of the genuine concerns remain, particularly where the Act applies UK standards to business carried on by, or for, the benefit of a UK business in other jurisdictions.

Meanwhile, the FSA has issued another substantial fine for failure to have adequate anti-bribery and corruption systems and controls. This is a reminder that, for FSA-regulated businesses, the FSA is the more likely source of enforcement action in this area, not least because it does not need to show bribery itself has actually occurred: inadequate systems and controls may be sufficient to justify a substantial fine. The FSA is also consulting on a new guide for firms on financial crime, drawing together much of its previous advice in this area.

The Ministry of Justice's guidance on the Bribery Act can be found at:  
[www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm](http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm)

The FSA's consultation paper on its draft guide to financial crime can be found at:  
[http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11\\_12.shtml](http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_12.shtml)

### **Civil Law Reform Bill**

The Ministry of Justice (MoJ) published a consultation paper on the proposed Civil Law Reform Bill under the previous Government on 15 December 2009. The proposals included reform of the law of damages, particularly for damages under the Fatal Accidents Act 1976, to take forward proposals outlined by the Law Commission reports in the late 1990s. There were also proposals to reform the law relating to how pre and post judgment interest is calculated on claims for debt and damages, deriving from a Law Commission report in 2004.

The consultation period ended in February 2010. The consultation period was less than the usual 12 weeks as the previous Government attempted to push through the draft Bill before the General Election.

The coalition Government has reviewed the position, as it would be entitled to do with any proposal inherited from the previous administration. In January 2011 the MoJ announced that, after considering the consultation responses and the report of the Justice Committee, it has decided not to proceed with the Bill, as it would not contribute to the delivery of the Government's key priorities.

### **Consumer Insurance (Disclosure and Representations) Bill**

The Consumer Insurance (Disclosure and Representations) Bill was introduced in the House of Lords on 16 May 2011. The proposed legislation stems from recommendations made by the Law Commission and Scottish Law Commission in December 2009 as part of their review of insurance contract law.

The Bill is to follow the procedure for uncontroversial Law Commission Bills and it is anticipated that the earliest it could receive Royal Assent is early next year, the provisions then taking effect in April 2013.

The purpose of the Bill is to update the law relating to pre-contractual disclosure and representations by consumers and to simplify the existing legal framework by removing layers of case law, guidance and voluntary codes which currently set the standards expected in this area.

At the heart of the Bill is the abolition of the duty currently imposed on consumers to volunteer material facts. Replacing it is a requirement on consumers to take reasonable care not to make a misrepresentation. The standard of care required is that of a reasonable consumer.

Three types of misrepresentation are envisaged and the Bill sets out the insurers' recourse in each case:

- an honest and reasonable misrepresentation will oblige the insurer to pay the claim;
- a "careless" misrepresentation will allow a compensatory or proportionate remedy for insurers such that they must look at what they would have done had the consumer taken care to answer the question accurately and completely;
- a "deliberate" or "reckless" misrepresentation will allow the insurer to avoid the policy, to treat the policy as if it does not exist and decline all claims.

In addition, the Bill abolishes "basis of the contract" clauses (whereby all answers given by a consumer on a proposal form are turned into warranties, breach of which could, as matters currently stand, automatically terminate the policy from the date of breach).

The Bill also clarifies the position of intermediaries for the purposes of providing information at the proposal stage. There are also special provisions for group insurance schemes, meaning that a misrepresentation by one member of the scheme will only have consequences for that member and will not affect other members.

The wider review of insurance contract law is ongoing and the Law Commissions are expected to publish a second consultation paper later in the year dealing with reforming business insurance law. Beachcroft continues to work closely with the Law Commission on this project and will prepare a response to the consultation exercise in due course. Beachcroft is also able to provide training on the Bill, highlighting the key practical considerations for insurers. For further information please contact [cshakespeare@beachcroft.com](mailto:cshakespeare@beachcroft.com).

### **Coroners and Justice Act 2009**

The provisions of the Coroners and Justice Act 2009 came into effect on 27 June 2011, extending the current measures for vulnerable and intimidated witnesses giving evidence in Court. Measures are designed to ensure that vulnerable witnesses can give their best evidence. The amendments will mean that the measures will now automatically be afforded to anyone under the age of 18 and that those classified as vulnerable will automatically be allowed to give their evidence in chief via video link and further evidence by live link.

### **Decentralisation and Localism Bill**

In December 2010 the Government published its Localism Bill. The intention of the Bill is to devolve greater powers from central Government to local councils and neighbourhoods in order to give local communities more control over housing and planning decisions in the local area. Key provisions of the Bill include the grant of a general power of competence to local authorities which would give them the right to do "anything apart from that which is specifically prohibited". Proposals are also made in relation to the structures of local Government. In relation to housing, the requirement to provide a Home Information Pack is abolished and the Bill proposes significant changes to the planning regime. The Bill completed the committee stage in the House of Lords prior to the end of the last session of Parliament and will commence the penultimate stage of House of Lords review in September with the report stage.

### **Defamation Bill**

The Ministry of Justice published a draft Defamation Bill in the Spring this year and launched a consultation process, the outcome of which should be known this Autumn.

Much of what the Bill would do, if enacted, would be to give a statutory framework for the developing common law. For example, there would be new statutory defences of Truth and Honest Opinion replacing the common law defences of Justification and Fair Comment respectively.

Significant for insurers, though, is the provision which would give judges statutory power to strike out cases which failed to reach a threshold of seriousness. This, in theory at least, should minimise vexatious claims from litigants in person. Other proposals include abolishing the right of companies to bring and sustain claims in defamation.

### **Equality Act 2010**

The long-heralded Equality Act reached the statute book in April 2010 and many of its provisions came into force on 1 October 2010. Further provisions became effective in April 2011.

The Act has replaced a range of legislation addressing a wide variety of discrimination issues in the workplace and in the provision of goods, facilities and services in both the public and private sectors. In addition to streamlining and harmonising discrimination law, a number of ills, developed over the preceding 40 years, have been cured. However, the Act is not without ills of its own, as case law will no doubt demonstrate in due course.

Employers and insurers alike are getting to grips with some of the subtle changes brought about by the new Act. For example, the widening of protection for people with disabilities may entail the need to take a fresh approach to recruitment and employment. There are limitations on health-related questions that can be asked of job candidates before they are offered a post. The duty to make reasonable adjustments is also given renewed emphasis. In the public sector, with effect from April 2011, public bodies have had to focus on the nature and extent of their new obligations, having regard to relevant protected characteristics, in the discharge of their public functions.

The vast majority of provisions under the Act afford protection against discrimination in respect of nine different protected characteristics: race, disability, religion or belief, sexual orientation, gender, gender re-assignment, pregnancy and maternity and age. Marriage also gives rise to protection in some circumstances.

Recognising the particular challenges faced by businesses and public bodies alike, the provisions prohibiting discrimination in the provision of services and public functions on the grounds of age have not yet been brought into force but this is expected by April 2012. The Government published proposals on exceptions to this ban earlier in the year; the consultation (to which Beachcroft responded) closed on 25 May 2011. Specific exceptions are proposed to allow insurers to continue to use age when assessing risk and deciding prices, and to continue the use of age banding and age limits. There may be a further delay in implementing the Act with respect to age discrimination in the provision of health and social care.

There are express provisions which deal with insurance policies, to cater for a range of transitional and practical issues. These provisions cater for a number of exemptions or qualifications to modify the immediate impact of the Act in relation to insurance services, particularly with respect to disability, sex, gender reassignment, pregnancy and maternity. The extent to which these provisions can be sustained in light of the ECJ's decision in the *Test Achats* case (see Regulations, Directives and other Guidance below) remains to be seen.

The Act has already been subject to amendment and a key development in the law has been the abolition of the default retirement age. (For further information on this, see the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 below.)

### **Financial Services (Unfair Terms in Consumers Contracts) Bill**

This private member's Bill was designed to reverse the Supreme Court's ruling that overdraft charges form part of the main price or remuneration, and therefore cannot be challenged under the Unfair Terms in Consumer Contracts Regulations 1999, provided they are described in plain, intelligible language.

Although the Bill itself was dropped, the Financial Services Bill below may well provide an opportunity for the introduction of measures along these lines as it makes its way through the parliamentary process.

### **Financial Services Bill – The Blueprint for Reform and New European Regulators**

In June 2011 the Government published the first draft of its Financial Services Bill, which will implement its plans to replace the FSA with a new Prudential Regulation Authority (PRA) and a Financial Conduct Authority (FCA). Much of the 225-page Bill makes technical amendments to the Financial Services and Markets Act, to reflect the new regulatory structures.

At the same time, controversial new powers are included which will allow the FCA to publish warning notices. The FCA is also given greater powers to support product intervention, and to require firms to withdraw financial promotions.

The term "product intervention" covers a range of measures which build on previous FSA work around Treating Customers Fairly and enforcement of the Unfair Terms in Consumer Contracts Regulations 1999. However, it has the potential to go much further, with the FCA potentially intervening early in the product life cycle and scrutinising both product terms, the way in which products are marketed and sold, and even their price. Existing guidance is likely to be turned into rules.

In the context of insurance, particular attention is likely to focus on insurance policies sold as secondary purchases alongside other products (such as mobile phone insurance or with premium bank accounts), as well as PPI-type policies.

As well as the Bill itself, the Government is also consulting on additional measures which, if implemented, would be reflected in further clauses to the Bill. One proposal of particular interest is in the area of consumer redress, and would give parties such as consumer groups the right formally to bring issues to the attention of the FCA. The FCA would then be required to look into the issue and state publicly whether the issue is, in its view, causing mass detriment meriting regulatory intervention.

A new European regulatory architecture also came into place on 1 January 2011. This included the replacement of the three existing "level 3" committees with new European Supervisory Authorities (ESAs), with strengthened powers to ensure consistent implementation of European Directives throughout member states. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) has been replaced by the European Insurance and Occupational Pensions Authority (EIOPA).

In the words of Hector Sants, Chief Executive of the FSA, the ESAs "will be the key policy-making forums in the EU, leaving the FSA and its successor bodies to act primarily in a policy-influencing and national supervisory role".

### **Health and Social Care Bill**

This Bill was introduced to Parliament in January 2011 but will not become law until Autumn at the earliest, following a pause in the parliamentary proceedings to allow the Government to review its position on the Bill. The Bill is currently going back to the House of Commons Committee stage.

Key provisions in the Bill include: the abolition of Primary Care Trusts and the transfer of commissioning powers to GPs; the abolition of NHS trusts, with all non-Foundation Trusts being

required to achieve Foundation Trust status or be merged into other providers; the creation of a new economic regulation framework for all healthcare providers, to be operated by Monitor in tandem with the quality regulation framework of the Care Quality Commission, under which Monitor would licence healthcare providers and set the price tariff for healthcare services; the grant of competition regulation powers for the health sector to Monitor in tandem with the OFT; the power to give Monitor functions in relation to adult social care; the transfer of public health functions from PCTs to local authorities; the creation of new statutory Health and Wellbeing Boards within local authorities with responsibility to encourage greater integration of health and social care provision.

The new economic regulatory system for all healthcare providers, public and private, is the main mechanism in the Bill for fulfilling the Government's "Any Willing Provider" philosophy, in which it is intended that GPs will commission, and patients can select care pathways from, their chosen provider whether that organisation is in the public, private or voluntary sector.

This is a very significant piece of legislation which seems likely to affect the insurance market through its impact on public expectations of health services and the shaping of care pathways. However, the exact nature of the amendments to be made in the Committee stage and the House of Lords are yet to be known and these will affect the final shape of the Bill.

### **Legal Aid, Sentencing and Punishment of Offenders Bill**

Following on from Lord Justice Jackson's report "Review of Civil Litigation Costs" the Ministry of Justice consulted on the recommendation that the recoverability of additional liabilities should be abolished. The Legal Aid, Sentencing and Punishment of Offenders Bill takes that forward. The main elements of the Bill of interest are that:

- success fees will no longer be recoverable from the losing party at all;
- ATE premiums (and the trade union "premium equivalent") will also be irrecoverable from the losing party;
- there is an exception which preserves ATE premium recovery only for experts' reports in clinical negligence cases, subject to a likely cap on recoverable premium levels;
- contingency fees (known as Damages Based Agreements or DBAs) will be permitted for all claims;
- a defendant who does not better a claimant's Part 36 offer to settle will face paying a penalty in the form of an additional percentage of damages;
- the transitional provisions mean that there will be a long tail of cases where success fees and ATE premiums will still be recoverable, provided that the agreement was entered into before this Bill becomes law.

#### **Success Fees**

Clause 41 sets out the new regime and confirms that success fees will no longer be recoverable from the "paying party" (usually the defendant) in any type of case. Instead, the solicitor can claim a success fee from the client, but secondary legislation will limit the success fee that can be recovered from the client to a capped percentage of damages of a certain type in specific types of claim.

#### **ATE Premiums**

Clause 43 removes the old provisions on recovery of ATE premiums at a stroke and replaces them with a limited recovery of premiums only for the cost of experts' reports in clinical negligence cases. The provisions which allowed organisations such as trade unions to recover the equivalent of an ATE premium, by providing cover for a member's claim, are also abolished completely by clause 44.

### Qualified One-Way Costs Shifting (QOCS)

The Bill is silent on QOCS, but it is understood to remain very much part of the Government's plans, limited to personal injury and clinical negligence claims. QOCS was intended to be the answer to the legitimate fear of claimants about the risk of paying opponents' costs (by removing the risk in all but a few cases). There have, however, been concerns about how it might work in practice and about the risk that it could encourage spurious or fraudulent claims.

### Contingency Fees

Clause 42 enables DBAs to be used in all civil claims. A solicitor can, therefore, legitimately act for a client on the basis that the solicitor will receive a set percentage of the damages recovered.

### Part 36 – Claimants' Offers To Settle

Clause 51 provides the enabling powers for Lord Justice Jackson's plan to create more incentives for claimants to make offers. Although this proposal creates a risk of additional payments by liability insurers, it also puts claimants' advisers in a position where they will have to protect their clients' interests by making good offers to settle. This is likely to lead to more settlements, although it will be important to ensure that the incentive is to make offers early in the court process rather than immediately before trial.

### Transitional Provisions

None of the costs changes will apply to agreements entered into before the Bill comes into force, which is likely to be in October 2012. Much of the detail, including the operation of QOCS, will be subject to Civil Procedure Rules to be drafted early next year.

### Legal Services Act

The rules governing alternative business structures under the Legal Services Act were due to come into force on 6 October 2011. Under these rules, a legal practice could, for the first time, introduce outside ownership by non-lawyers in return for a share of profits.

There has been a "hitch" with the regulations required for implementation and this will not be rectified by the Ministry of Justice in time for launch on 6 October 2011. No new date has been set but the latest estimate is early 2012.

### Local Democracy, Economic Development and Construction Act 2009

A commencement date of 1 October 2011 has now been given for Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (LDEDC Act 2009). This will introduce amendments to Part II of the Housing Grants Construction and Regeneration Act 1996 (the Construction Act) which regulates the payment provisions and the adjudication procedure in construction contracts. Amendments to the Construction Act were first proposed in 2004.

The Construction Act currently only applies to construction contracts (as defined) that are in writing or evidenced in writing. In a significant change, the LDEDC Act 2009 removes this requirement (except for the adjudication provisions of a contract, which must still be "in writing" or else the statutory adjudication provisions of the Scheme for Construction Contracts will apply). As a consequence, parties to an oral or partly oral contract will be able to rely on the Construction Act. This is likely to increase the number of disputes referred to adjudication. However, it may well cause problems for adjudicators and protracted arguments over the contract terms are likely.

With regard to adjudication, one of the changes being introduced is a restriction on the parties' right to agree who pays the parties' costs of the adjudication until after a notice of intention to refer a dispute to adjudication has been given. However, the wording of this sub-section has been criticised and some legal commentators have suggested that the provision has the opposite effect to that intended.

A judgment from the court will be required to clarify this.

Parties to construction contracts will need to ensure that they are familiar with the new payment provisions. These include the introduction of a payment notice by either the payer or payee and a requirement for the paying party to pay the notified sum. A payment notice must be given even if the amount due is zero. The current withholding notice is being replaced by a "pay less" notice which must specify the sum that is considered to be due and the basis on which this is calculated.

Consequential amendments are being made to the Scheme for Construction Contracts. A separate (but virtually identical) Scheme will apply in Wales. (The Scottish Scheme will have a number of differences.)

Construction contracts entered into after the commencement date will be subject to the amended provisions of the Construction Act. It is quite possible that the chain of contracts relating to a construction project could include contracts subject to the old and new provisions of the Construction Act.

In readiness for the Construction Act, the JCT is publishing 2011 editions of its standard form contracts in September 2011. The new contracts will incorporate the JCT Terrorism Cover Update. Accordingly, if a JCT 2011 edition contract is used, the parties will no longer have to decide whether to incorporate the update as it will be incorporated for them.

#### **Pleural Plaques and Scotland/Northern Ireland**

In April 2011 the Court of Session upheld the Scottish Parliament's decision to introduce compensation for pleural plaques pursuant to the Damages (Asbestos-related Conditions)(Scotland) Act 2009. The significance of the matter saw an appeal swiftly brought to, and heard by, the Supreme Court on 13 June 2011. The court's decision is awaited. The appeal was brought by AXA General Insurance Limited, AXA Insurance UK Plc, Norwich Union Insurance Limited, Royal & Sun Alliance Insurance Plc and Zurich Insurance Plc.

The Damages (Asbestos-related Conditions) Bill passed its final stage in the Northern Ireland Assembly in March 2011 and received Royal Assent on 21 June 2011.

#### **Third Parties (Rights Against Insurers) Act 2010**

It had been anticipated that the Third Parties (Rights Against Insurers) Act 2010 would come into force on 6 April 2011. At the start of this year, the Ministry of Justice website stated that the Government was working to identify what needed to be done to ensure a smooth commencement. However, no further announcement has yet been made.

## 2. Regulations, Directives and Other Guidance

### **Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011**

These Regulations came into force on 6 April 2011, to abolish the so called “default retirement age”. This change in the law has meant that employers will no longer be able to require employees to retire on reaching 65 (or any higher age) without objective justification. Transitional provisions have enabled employers, who commenced the process before 6 April 2011, to give notice to retire to employees whose 65<sup>th</sup> birthday falls on or before 30 September 2011. A strict procedure is stipulated and it is already evident that some employers may be in trouble for failing to comply fully with the regulatory regime or because they have failed to follow the process in good faith.

The practical result of this change in the law is that the vast majority of employers will not seek to require employees to retire but will leave it to employees to choose when to give up work. In rare cases it may be possible objectively to justify compulsory retirement ie. where the employer can show that this is a proportionate means of achieving a legitimate aim. Examples might include succession planning or health and safety reasons.

The knock on effect of this change in the law is that employers are having to review and often revise their policies, from recruitment through to the award of retirement gifts, and a good deal in between. Where age related criteria are retained (for example, in relation to enhanced redundancy terms), cost and other factors have to be balanced in order to satisfy the objective justification test. Unlike other areas of discrimination law, it is possible objectively to justify both direct and indirect age discrimination, where taking account of age is a proportionate means of achieving a legitimate aim.

One welcome addition to the law is the exemption now available to employers who wish to cease providing insurance or a related financial service to employees on their reaching 65 (or state pensionable age when this is higher). Employers providing benefits such as group income protection and life cover are now generally able to withdraw such benefits without falling foul of discrimination law. Self-insurance arrangements are also exempted, where the employer’s business includes the provision of insurance or financial services of the description in question. It is disappointing that the exemption did not extend to all forms of self-insurance. However, in the light of the exemption, employers may well be able objectively to justify the cessation of such benefits where to do so is consistent with the concept underlying the exemption.

### **Environmental Civil Sanctions (England) Order 2010**

From 4 January 2011 the Environment Agency has been able to use its new powers, which apply to offences committed in England after 6 April 2010, to impose civil sanctions alongside current powers to prosecute offenders for breaches of environmental legislation. There are six sanctions which include financial penalties, Orders focussed on preventing offending behaviour and restoring damage and binding undertakings given by offenders to take action.

### **EU Mediation Directive**

The Cross Border Mediation (EU Directive) Regulations 2011 came into force on 20 May 2011. They apply where a mediation in relation to a relevant dispute starts on or after 20 May 2011. Although some Member States intend to apply the Directive to domestic mediations, in the UK the Directive will apply solely to EU cross border disputes (and this does not include mediations between parties based in the separate jurisdictions of the United Kingdom).

### **FSA Guidance on Aggregator Websites**

The FSA has published proposed guidance on the selling of general insurance policies through price comparison websites. It carries important messages not just for those who run aggregator sites, but also for brokers and insurers selling through such sites.

The guidance highlights concerns around whether the aggregator has the correct permissions for the activities it carries on, and specific issues around non-compliance with ICOBS (Insurance: Conduct of Business Sourcebook) and SYSC (Senior Management Arrangements, Systems and Controls). The FSA is also concerned that consumers may be misled about the services they are receiving from aggregator websites and, in the case of white-labelled sites, who is providing the service.

The FSA also emphasises that brokers and insurers selling through such sites are themselves required, under SYSC 6.1.1R, to take measures to ensure that they are not used to further financial crime. Brokers and insurers are therefore required to check that any aggregator sites through which they market their services are correctly authorised.

The period for comments on the FSA's draft guidance closed on 8 August 2011, and finalised guidance will no doubt follow shortly.

The FSA's draft guidance can be found here:

[www.fsa.gov.uk/pages/Library/Policy/guidance\\_consultations/2011/11\\_13.shtml](http://www.fsa.gov.uk/pages/Library/Policy/guidance_consultations/2011/11_13.shtml)

### **FSA Increase in FOS Award to £150k**

In June 2011, the FSA confirmed the Financial Ombudsman Service's maximum award limit will rise from £100,000 to £150,000 in relation to all complaints referred to it on or after 1 January 2012.

See also the Appendix of case law summaries for the decision in *Andrews v SBJ Benefit Consultants*.

### **Late Payments Directive**

This Directive came into force on 15 March 2011. Each Member State has until 16 March 2013 to implement its provisions, at which point the old Late Payments Directive will be officially repealed.

In summary, it requires public authorities to pay invoices for goods and services within 30 days. They may extend this period in exceptional circumstances but not beyond 60 days and this must be agreed in writing and not be "grossly unfair" to the supplier. Purchasers in default of the payment due date will be required to pay interest at a rate of 8% over the reference rate and compensation costs.

There are some exceptions to the general payment rules. First, if a contract for goods and services contains an acceptance or verification period, the Directive provides that interest will not start to run until acceptance or verification takes place. Second, healthcare providers and public authorities which carry out economic activities of a commercial nature (for example, offering goods and services on the market) are allowed payment deadlines of up to 60 days. Third, the Directive allows parties to agree payment by instalments and in these instances, interest and compensation will only be incurred in regard to each instalment rather than the whole contract price.

### **On the Spot Fines for Careless Driving**

The Government has announced plans to introduce on-the-spot fixed penalties for the offence of driving without due care and attention (careless driving). Under the new proposals fixed penalties would be issued for a range of low level driving offences including tail-gating, overtaking in an inside lane and cutting up other motorists.

The fixed penalties will comprise fines of £80 -£100 and three penalty points. They are likely to be introduced in 2012, although the proposals are yet to be ratified by Parliament.

The fixed penalties are intended to deal with driving offences, committed by otherwise law abiding drivers. Motor insurers should, however, be aware that this may, on current policy wording, result in policyholders seeking to claim under their legal expenses insurance (LEI) cover for paid representation should they wish to challenge the police's action against them.

The risk for insurers is that this abbreviated route to conviction may leave them exposed to liability in related civil claims, where there is little or no correlation between the level of criminal culpability and the level of injury and hence civil damages may be significant. The prospect of liability arguments being signed away by the policyholder before insurers have any opportunity to intervene suggests that guidance to policyholders in this area should be carefully reviewed.

It is too early to say whether these changes will require alteration to the LEI cover but clearly, as and when the detail becomes available, a review of the relevant wordings will be required to ensure the right balance between expenditure under the LEI section and the risk of payments under the liabilities section.

### **Privacy and Electronic Communications (Amendment) Regulations 2011**

Potentially one of the most costly legislative changes this year for all organisations operating websites arises from the new rules which came into force on 26 May 2011 dealing with the use of cookies. The Privacy Regulations provide that a website operator must not store information or gain access to information stored in the user's computer or other web-enabled device (i.e. cookies) unless the user "is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information" and "has given his or her consent".

Previously the requirement was for website operators to tell users: (i) that the website uses cookies; and (ii) that users can opt out from such use by changing their browser settings. These obligations were often hidden away in privacy policies taking the form of a vague wording on the use of cookies on a site and pointing the user towards altering the browser settings if they did not want cookies to be used. The Privacy Regulations oblige website operators to move away from this passive approach towards actively gaining consent. The only cookies that do not need user consent are those that are strictly necessary to fulfil the user's request for services. This exemption covers, for example, the use of cookies to remember the contents of a shopping basket on an online shopping website, so that a user can move through several pages on a website, without having to restock their shopping basket every time they change page. All other cookies, for example those counting visitors to a website and those used for advertising, will require consent.

The Government has set up a working group comprising Mozilla, Apple, Microsoft, Google, Yahoo, the Internet Advertising Bureau and Adobe to work on a technical solution so that browser settings can be used to gain consent. Until a technical solution is reached, to comply with the Information Commissioner's Office (ICO) Cookie Guidance, website operators must obtain consent some other way. The ICO has stated that, until May 2012, it will not take any enforcement action against companies that can show they are working on solutions to the problem of obtaining consent and has made clear that any inaction during this time will be unacceptable. ICO Cookie Guidance states organisations should check what type of cookies the business uses and how they are used; assess how intrusive the use of cookies is; and decide what solution to obtain consent will be best in the circumstances.

The ICO has powers to fine up to £500,000 for a breach of the Privacy Regulations. UK website operators, therefore, have no choice but to look at each of their websites and consider how they can build in mechanisms to obtain consent to the use of cookies.

### **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 Changes**

From 12 September 2011 statutory reporting to the HSE of work related injuries and incidents under RIDDOR will move to an online system. Revised online forms are being developed. Businesses will no longer be able to report incidents by post, email or fax but will be able to report fatal and major injuries and incidents via telephone to the HSE's incident contact centre. In addition the HSE's infoline is closing.

### **Solvency II and Omnibus II Directive**

Following media reports of a proposed delay to Solvency II implementation to 1 January 2014, the

FSA updated its Solvency II webpage to clarify the position.

The FSA is continuing to prepare for a Solvency II implementation date of 1 January 2013 and it encourages firms to work to this same timetable. The information on its website mentions the discussions at EU level that have taken place on whether general transitional provisions are needed to delay the implementation of the new regime. Two key proposals are being considered in this respect.

- Bifurcation of Solvency II - 1 January 2013 would remain the date at which the responsibilities of supervisors and EIOPA would be switched on (i.e. transposition would have to be complete by 1 January 2013), but Solvency II requirements would not be switched on for firms until 1 January 2014. In the intervening year firms would continue to be regulated under the existing regime, firms' progress towards Solvency II would be monitored by supervisors and firms and supervisors would be able to complete the necessary approval processes (e.g. internal models, ancillary own funds).

(There are two variants to this proposal: "best efforts" Solvency II reporting on key indicators of readiness during 2013 to allow supervisors to monitor firms' preparations for Solvency II; or full Solvency II reporting during 2013.)

- Derogation of the Solvency Capital Requirement (SCR) for one year from 1 January 2013 - Solvency II would go live as expected on 1 January 2013, but firms could derogate their SCR during this first year without disclosing this to the market. They would have to notify their supervisor and submit a recovery plan to them, which if approved would effectively allow them to enter an extended recovery period until 1 January 2014.

It is not clear which, if either, of the two proposals is likely to be adopted. Full legal certainty will not be available until Omnibus II is adopted by the European Parliament, probably in January 2012. The FSA recognises that this is very close to the current opening of the internal model application window and has said it will communicate with firms as soon as it has more clarity.

### **Test-Achats ECJ Case on Use of Gender as a Factor in Pricing Insurance**

The European Court of Justice gave its ruling on 1 March 2011 on the use of gender as a factor in the assessment of insurance risks. It decided that article 5(2) of the Gender Directive, which permits different premiums to be applied to men and women based on actuarially supported data, will be invalid from 21 December 2012. It has been widely assumed that this means that all insurers within the EU will have to apply gender neutral pricing from that date.

It is currently unclear exactly how the Commission will respond to this ruling; guidance is expected later this year from the Commission on its interpretation of the judgment. There is pressure on the Commission to amend the Gender Directive by including an alternative form of exclusion, rather than simply removing Article 5(2) entirely. If it does follow this course, and if Member States reflect the new exclusion in their national laws, some differentiation based on gender may still be permitted.

### 3. Consultations, Reports and Reviews

#### Administrative Redress: Public Bodies and the Citizen

On 26 May 2010, the Law Commission published its report "Administrative Redress: Public Bodies and the Citizen". This set out an overview of the responses to the consultation paper and brought to a close the state liability aspects of its administrative redress project. Although the report concluded that there is no enthusiasm for the Public Law scheme outlined in the consultation paper, the report did make a series of recommendations aimed at improving access to the public services ombudsmen, focused on improving the current statutory regimes. The report also recommended that the Government establish a wide ranging review of the Public Services Ombudsmen and their relationship with other institutions for administrative redress, such as courts and tribunals.

The Law Commission's Public Services Ombudsmen report was published on 14 July 2011 and focuses on five ombudsmen: the Parliamentary Commissioner, the Health Services Ombudsman, the Local Government Ombudsman, the Public Services Ombudsman for Wales and the Housing Ombudsman. The report makes a series of recommendations aimed at improving access to and the independence and accountability of these offices.

#### Consultation on Modern Workplaces

In May 2011 the Government launched its consultation document in which it set out its proposals for a range of changes to the law affecting the workplace. A number of amendments are proposed to the Working Time Regulations, to cater for the issue arising on the entitlement of employees to take their annual leave where they have been absent from the workplace due to sickness, maternity or parental leave. It is proposed that these changes are introduced in 2012, but the detail will in part be determined by the outcome of cases to be heard both in the Court of Appeal and the European Court of Justice. It is hoped that it will be made clear that no employee will be allowed to carry forward more than a limited amount of annual leave from one year to the next (perhaps limited to the minimum four weeks prescribed under the Working Time Regulations rather than the fuller 5.6 weeks for which it also caters). This development in the law will undoubtedly influence the approach taken by employers and insurers providing group income protection schemes in their approach to the management of long term sickness absence and its cost implications.

The consultation document also addressed the contentious issue of how to tackle the gender pay gap and whether an employer who is found by a Tribunal to have breached equal pay law should be ordered to conduct a pay audit. Respondents were also asked to consider whether such an order should be made in the event of a finding of gender based discrimination in respect of non-contractual pay. The principle underlying these proposals is a desire to achieve greater transparency in pay structures, not least in the financial services sector. We can expect further developments in the course of next year.

The Government also proposes an extension of the right to request flexible working to all members of the workforce. This is, in some respects, the least controversial of the proposals and reflects the practice of many large employers who already operate a flexible working policy across their workforces.

The fourth area addressed in the consultation document is flexible parental leave and the proposal to enable parents to have greater choice and flexibility in their parental leave arrangements. An entirely new system of parental leave and pay, available to mothers and fathers on an equal basis, is advocated, to replace the current maternity leave and pay beyond the first 18 weeks of a child's life. The Government proposes that such a new system be introduced in April 2015.

The deadline for responding to the consultation was 8 August 2011. Beachcroft made submissions to the Department for Business Innovation and Skills, reflecting the practical issues and concerns of employers raised by the proposals.

### **Dilnot Commission Report on Funding for Long-Term Care**

The Dilnot Commission was asked by the Government to consider how best to meet the costs of long term care and support for adults as a partnership between individuals and the state; how people could choose to protect their assets, especially their homes, against the cost of care; and how, both now and in the future, public funding for the care and support system can be best used to meet care and support needs. The report of the Commission was published in July 2011, with its main recommendation being a "cap" of £35,000 on individual contributions to long term care costs, with the state providing the rest once the cap is exceeded.

It is not yet known whether/to what extent the Government will accept the recommendations, but it has indicated that it is likely to produce a White Paper on social care funding next year, to dovetail with the planned White Paper on reform to the framework of adult social care law. There are different views on whether the proposals should be regarded as costing a great deal in real terms: the figure given in the report as the cost of reform is £2bn, but the Commission argues this is not a high figure relative to other areas of public spending. If the Commission's proposals were accepted it is thought that they will increase the scope for creating new insurance products to cover care costs, because they would ensure certainty as to the level of an individual's liability.

### **Discount Rate Review**

In November 2010, in response to the threat of judicial review from the Association of Personal Injury Lawyers (APIL), the Lord Chancellor made public his intention to conduct a review of the discount rate for calculating future loss claims pursuant to the Damages Act 1996. Both APIL and the ABI made various submissions to the Lord Chancellor. In the absence of any visible developments, APIL issued proceedings for judicial review at the beginning of April 2011, seeking orders to require the Lord Chancellor to review and reduce the discount rate. APIL's argument is based firmly on the decision of the Guernsey Court of Appeal in *Helmot v Simon* in January 2010, which set a negative discount rate (minus 1.5%) for care costs and other earnings related losses. The statutory discount rate in England and Wales remains unchanged since it was first set at 2.5% in June 2001.

In May the junior minister at the Ministry of Justice (MoJ) confirmed in Parliament that the MoJ would issue a public consultation on the methodology to be followed in setting the discount rate. Subsequent papers indicated that this consultation paper would not be issued before late September/October.

APIL's judicial review proceedings have just been refused permission on paper. The Notice of reasons for the refusal indicates the court's opinion that, if the Lord Chancellor does not issue the consultation paper more or less by the end of October, this might provide grounds for a fresh challenge by APIL.

### **Helmot v Simon**

In January 2010 the Guernsey Court of Appeal ruled on the defendant's appeal on issues relating to the discount rate used to calculate future loss claims in personal injury actions. The law in Guernsey is similar to that in England and Wales but differs in two important respects. First of all there is no statutory power to set the discount rate: such power in England and Wales is now vested in the Lord Chancellor under the Damages Act 1996. Secondly there is no power for a court to award periodical payments for future loss as would be permitted under the amendments to the Damages Act 1996 introduced in 2005.

Jonathan Sumption QC, sitting in the Guernsey Court of Appeal, ruled that Guernsey did not have to have regard to the statutory rate set by the Lord Chancellor in England and Wales and could formulate its own discount rate. However, the court was bound by the interpretation of the common law by the House of Lords in *Wells v Wells* in 1998, which held that any rate should be derived from the net rate of return in index linked Government securities (ILGS). Allowing for the change of those returns over time and the differences between inflation measures in the UK and Guernsey, the Guernsey Court of Appeal set a discount rate of minus 1.5% for care and earnings related losses and plus 0.5% for all

other losses.

The defendant has exercised the right of appeal to the Privy Council (Supreme Court) and has recently received leave to proceed with the appeal. By the time the case is heard, Jonathan Sumption QC will have been formally appointed as a judge of the Supreme Court, although he will presumably not be permitted to sit on an appeal from his own decision.

### **Employers' Liability Tracing Office and Employers' Liability Insurance Bureau**

The ELTO service, which went live from 12 July 2011, replaces the previously voluntary Employers' Liability Code of Practice (ELCOP) tracing service. The new service maintains a central database of all new and renewed EL policies from April 2011, policies from before April 2011 that have new claims made against them and policies that were identified through the previous tracing service. Over 95% of

the EL insurance market has signed up as members. ([www.elto.org.uk](http://www.elto.org.uk)).

The Government is yet to publish a report following the consultation in February 2010 that put forward a proposal to establish an Employers' Liability Insurance Bureau. This would help claimants who do not receive compensation for industrial disease as they are not able to trace the relevant insurers. Despite calls to do so, there is also no commitment from the Government as to when such a response is to be published and therefore it remains to be seen whether such a body, akin to the Motor Insurance Bureau, will ever get off the ground.

Lord Freud, the Minister of State at the DWP, has met with insurers to outline his proposals for introducing a scheme to compensate occupational mesothelioma victims who cannot trace insurance cover, based on historic market share of such liabilities. These proposals are currently under consideration with the ABI.

### **European Contract Law Call for Evidence**

The European Commission has, for several years, been engaged in work aimed at improving the clarity and coherence of EU legislation in relation to contract law. This work is to be underpinned by a Common Frame of Reference (CFR) which has been widely characterised as a non-binding "legislator's toolbox". Its purpose is to draw together legal concepts, definitions and principles based on the laws of all the Member States, so that any future European legislation in these areas could be based on a common understanding of how it would be interpreted throughout Europe.

On 1 July 2010, the European Commission published a Green Paper on policy options for progress towards a European Contract Law for consumers and businesses. The Green Paper assumes throughout that the current divergence of contract laws and private international law rules present problems for business and consumers alike in cross-border trade and that this may hinder the smooth operation of the internal market. Based on the assumption that the status quo presents problems, the Green Paper then canvasses what form any response might take. It sets out seven possible options which respondents are invited to comment on, as follows:

- Option 1: Publication of the results of the Expert Group responsible for drafting the CFR, without endorsement at EU level
- Option 2: An official toolbox for the legislator (a) via a Commission act; or (b) via inter-institutional agreement
- Option 3: Commission Recommendation on European Contract Law via encouragement for Member States (a) to replace national laws with the European Union instrument; or (b) to incorporate the European Union instrument as an optional regime.
- Option 4: Regulation setting up an optional Instrument of European Contract Law
- Option 5: Directive on European Contract Law
- Option 6: Regulation establishing a European Contract Law
- Option 7: Regulation establishing a European Civil Code

The publication of the Green Paper initiated a public consultation on its contents which ran until 31 January 2011. In broad terms, the UK Government's response to the Green Paper concluded that there was insufficient evidence of a problem with the current arrangements under discussion, and in particular the current divergence of national laws of contract, to cause a problem that affects the proper functioning of the internal market or to suggest that any of the options beyond the use of the CFR as a toolbox for legislators and the publication of the work of the Expert Group would be proportionate and necessary.

On 12 April 2011, the European Parliament Legal Affairs Committee approved an own-initiative report which backed an optional European contract law. A vote of the European Parliament in plenary session on 8 June 2011 approved a resolution on policy options for a European contract law for consumers and businesses. The vote followed a recent policy announcement by the European Commission that it was considering proposing an optional European contract law in the autumn of 2011.

### **Health and Safety Legislation Review**

In March 2011 the Work and Pensions Minister Chris Grayling announced that health and safety inspections would be reduced by one third (11,000 inspections), with regular inspections focussing on high risk sites such as energy and nuclear sites and chemical industries. Offenders will be charged for the cost of inspections and investigations.

He further introduced a long term review of health and safety laws in the workplace to be undertaken by Professor Ragnar E Lofstedt, with the objective of considering opportunities for reducing the burden of health and safety legislation on UK business while maintaining the progress on health and safety outcomes. He has obtained evidence from key stakeholders and is due to report in the Autumn.

### **Hourly Rates Review**

The Advisory Committee on Civil Costs has proposed that there is an earnings inflation linked increase in the guideline hourly rates for 2011. There have been objections raised to this on the basis that earnings inflation is not the correct indicator against which to calculate hourly rates. As yet the recommendations have not been accepted and no new rates have been published for 2011.

### **IMD2**

The European Commission (Commission) launched a consultation on proposed changes to the Insurance Mediation Directive (IMD) in November 2010. One of the key proposals is to extend the IMD requirements to direct sales. Other proposed changes include a conflicts of interest framework (using the current Markets in Financial Instruments Directive (MiFID) arrangements as a benchmark), measures to address remuneration transparency and improvements to arrangements for cross border business. The Commission also plans to amend the IMD in light of its packaged retail investment products (PRIPs) initiative (see below).

The Commission had originally indicated that a first draft of IMD2 would be published in December 2011; however, it has recently announced that this has been pushed back to Q1 2012.

The FSA says its objective in engaging with IMD2 is to ensure proportionate and relevant requirements are applied to insurers and intermediaries.

The ABI has pushed back on the proposal to extend the IMD requirements to direct sales and said that any new rules for direct sellers must be risk based and proportionate.

The Commission consultation and a summary of responses can be found at:

[http://ec.europa.eu/internal\\_market/consultations/2010/insurance-mediation\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/insurance-mediation_en.htm)

### **London Assembly Planning and Housing Committee Report: Fire Risks in London's Tall and Timber Framed Buildings**

In December 2010 the London Assembly Planning and Housing Committee published its report on fire risks in tall buildings and timber framed buildings. The report was commissioned in order to make recommendations to the Mayor of London and the Government with regard to building regulations in relation to these types of buildings. The effect of fire on timber frame construction sites and on tall buildings is significantly greater than on other types of construction because of increased combustibility in the first case and difficulties with evacuation and tackling the blaze in the case of tall buildings. The report makes a number of key recommendations to be considered by the Government as part of its review of building regulations:

- The Department for Communities and Local Government should immediately review the building regulations in relation to timber framed buildings.
- The HSE and the Fire Brigade must be informed when buildings are being constructed using either timber frame or modern methods of construction.
- The CDM Regulations are reviewed to ensure that the building control process is strengthened in relation to timber framed buildings.
- Partial or full occupation of timber framed developments should not be permitted until the whole development is complete and signed off as compliant with building regulations.
- National guidance should be drawn up to ensure minimum standards of competence for the training and accreditation of fire risk assessors.
- All social landlords publish a full register of fire risk assessments for their properties. The report recommends action be taken to ensure fire stopping is key in both professional and DIY modifications to properties.
- Social landlords ensure they provide residents with necessary information on what to do in the event of a fire.

### **Markets in Financial Instruments Directive (MiFID) 2**

A fundamental review of MiFID is currently underway, to assess the level of integration and efficiency it has brought to the capital markets and protection for investors. The review of MiFID is examining issues such as the ramifications of increased competition between trading venues, market data quality and fragmentation, the use of transparency waivers, options to address recent technological advances in securities markets, investor protection and trading of OTC derivatives.

The ABI has noted that the most pressing issues for insurers include the need to create a consolidated tape to ensure quality of data; a level playing field across the EU in transaction reporting, but ensuring that rules developed with equity markets in mind should not be extended to other financial markets without careful consideration; and any increase in post-trade transparency in corporate bonds must be properly calibrated and managed.

The Commission is expected to publish a legislative proposal amending MiFID in October 2011.

The Commission consultation and responses can be found at:  
[http://ec.europa.eu/internal\\_market/consultations/2010/mifid\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/mifid_en.htm)

### **Ministry of Justice Consultation – Court Closures**

The MoJ consulted last year on court closures with the outcome that 23 courts have now been closed. The Mayor's and City County Court was originally listed among those that were to be closed but it received a last minute reprieve. Those courts that have now closed are: Cheltenham, Goole, Harlow,

Hitchin, Huntingdon, Leigh, Lowestoft, Newbury, Penzance, Poole, Whitehaven, Ashford, Bishop Auckland, Consett, Epsom, Haywards Heath, Aberdare, Northwich, Penrith, Pontypool, Runcorn, Southport and Salford.

### **Ministry of Justice Consultation – Solving Disputes in the County Courts**

On 29 March 2011 the MoJ published its consultation on solving disputes in the county courts. The consultation closed on 30 June 2011 and as yet there is no published response. The focus was on the possibility of extending the current low value personal injury in motor claims scheme to other injury claims and possibly clinical negligence and extending the fixed costs regime. Other issues covered by the consultation included whether ADR should be made mandatory; debt recovery and enforcement and structural reforms to the court system.

### **PRIPs (Packaged Retail Investment Products) Proposals**

The PRIPs initiative is intended to achieve consistent and effective standards for investor protection across a wide range of investments and ensure that there is a level playing field for distributors and providers of investment products. PRIPs comprise investment funds (both UCITS and non-UCITS), retail structured products and insurance-based investment products.

Proposals include requirements for improved investment product disclosure/transparency through a new piece of legislation, while strengthened sales standards will be delivered through changes to the IMD and MiFID.

A task force established by the three "level 3" committees (now replaced by the ESAs) published a report on PRIPs in October 2010. A consultation was launched in November 2010.

HM Treasury and the FSA published a joint response to the Commission Services' consultation on PRIPs. They were of the view that the proposed approach to introduce into the IMD rules on sales of PRIPs that are consistent with those in MiFID, while separately developing a PRIPs regime for MiFID products, poses significant risk of discrepancies arising between the two instruments that could undermine the consistency of the new regime. In the joint response the Commission was asked to take a more consolidated and ambitious approach to avoid unjustified divergence.

A legislative proposal on PRIPs is expected to be published in February 2012. This is expected to focus on new product disclosure rules.

The Commission Services consultation can be found at:

[http://ec.europa.eu/internal\\_market/consultations/2010/prips\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/prips_en.htm)

The HM Treasury and FSA joint response can be found at:

<https://circabc.europa.eu/d/d/workspace/SpacesStore/56ae6c06-346f-4fcb-ac7c-f4c3ec633c41/HTM%20%2b%20FSA.pdf>

### **Referral Fees Investigation**

Following complaints received from a number of his constituents as to increased levels of motor premium, Jack Straw began investigations into the reasons for the increases. His research resulted in the Information Commissioner's Office (ICO) launching an investigation into whether insurers are breaking data protection laws by passing on customer information to companies in return for payment of referral fees.

In answering a question put to him in Parliament on 30 June 2011 Jonathan Djanogly, the Parliamentary Under-Secretary of State for the Ministry of Justice, said, whilst he could not comment on an ongoing investigation, "I understand that it is the ICO position that if insurance companies were selling personal data to claims management companies without clearly informing the individuals

concerned, this would breach the first data protection principle and therefore be in breach of the Act. The ICO is discussing with the Association of British Insurers the industry's practice in relation to referral fees".

The Government has also announced its intention to ban payment of referral fees in personal injury claims. No detail of the proposed ban is yet available but the relevant statutory powers will probably be included in the Legal Aid and Sentencing Bill, with detail as to the scope of the ban to be outlined in regulations under the Bill. Both Lord Justice Jackson and Lord Young previously called for an outright ban on referral fees in their 2010 reports. In announcing that the purpose of the ban is to avoid rising insurance costs, the Government appears to have acknowledged a link between any ban and the need to reduce the level of legal costs paid to claimant's lawyers.

### **SRA Review of Professional Indemnity Insurance**

An increase in the value of claims and an increase in the number of firms facing difficulties in obtaining professional indemnity insurance (PII) through the open market has prompted the Solicitors Regulation Authority (SRA) to carry out a review of solicitors' PII arrangements.

In December 2010, the SRA sought comments on its proposals to amend its client financial protection arrangements. Following receipt of over 300 responses, the SRA published a Financial Protection Policy Statement in April 2011 setting out the SRA's policy for the period to 2014.

The main changes are in relation to the Assigned Risks Pool (ARP) which provides cover for solicitors who fail or are unable to obtain professional indemnity insurance on the open market. The cost of the ARP is borne by insurers who must contribute to the underwriting losses in proportion to their market share of the primary compulsory layer of insurance. The ARP has become increasingly unpopular with insurers and some, who have been sustaining losses in recent years which are attributed to the ARP burden, have been withdrawing from the market. To attempt to address the concerns with the ARP, the following changes are being made:

The amount of time that a firm can remain in the ARP will be reduced from 12 months to 6 months with effect from October 2011. (This period has already been reduced from 2 years to 12 months with effect from October 2010).

The ARP will be jointly funded by qualifying insurers and the profession from October 2012. Liability for claims arising from firms who have not taken out insurance will also move from the ARP to the Compensation Fund.

The ARP will be replaced in October 2013 with a system where insurers offer a three-month extended policy period to firms who cannot obtain professional indemnity insurance for the following year.

To facilitate the transition, the single renewal date will be maintained until October 2013.

The SRA has decided not to take the controversial step to exclude financial institutions from the minimum terms and conditions of insurance for the time being. This will be looked at again following the SRA's review of the regulation of conveyancing. However, no changes will be made until after October 2013.

The further reduction in time that a firm can stay in the ARP should reduce the cost to insurers and will mean that firms will have to work harder and more quickly to turn themselves around if they want to stay open for business.

The single renewal date has been an artificial market adjuster. The SRA has indicated that it intends to remove the annual renewal date once the new arrangements are in place in 2013. If that happens, firms will have greater flexibility to tailor the timings and/or duration of their primary cover to suit their businesses. This may result in a range of impacts, such as driving down insurance costs and introducing new policy issues, which could start to be seen quite early into the 2012-13 year.

### Telematics

Although this is not new technology, it has become of much more interest to motor insurers in the UK in 2010/2011. It provides a possible answer to the pricing for younger drivers in the face of escalating claims and legal costs and it is one possible way to provide individual pricing to conform with the requirements of the *Test Achats* judgment (see above).

Some interesting legal issues are beginning to emerge around the data provided to insurers by such technology, both as to data ownership and as to disclosure in civil or criminal proceedings.

### Third Party Funding

In June 2007 the Civil Justice Council (CJC) published advice to the Lord Chancellor in a paper titled "Improved Access to Justice Funding Options and Proportionate Costs - The Future Funding of Litigation, Alternative Funding Structures". The third recommendation in that paper related to properly regulated third party funding (TPF) and the CJC formed a Working Party to consider this issue further. Stakeholder events were held by the CJC in February and July 2008 where a draft Code of Conduct for Third Party Funding, which the Working Party had produced, was considered. Following Lord Justice Jackson's recommendations the draft Code of Conduct was revised and in February 2010 the CJC held another stakeholder event to consider the revised code.

In July 2010 the CJC opened a consultation on the Self Regulatory Code for Third Party Funding which closed in December 2010. A summary of responses was published in June 2011. The overall consensus in the responses was that there is a need for regulation of TPF and that a code of conduct was an important step forward. There was general acceptance that as TPF was still in its infancy, self-regulation was the most practical solution in the first instance, but that statutory regulation may be required if the market expanded significantly. Although there was general support for a TPF code in principle, almost all the respondents to the consultation thought that it should not be endorsed in its present form. The main concern was that the TPF Code, as currently drafted, did not strike the correct balance between the rights of funders and claimants so that litigants were not disadvantaged. A revised draft of the Code is expected to be submitted to the CJC for consideration at its next meeting in October 2011.

### Transport Select Committee

In March 2011 the Transport Select Committee (TSC) reported on its review of the cost of motor insurance.

The TSC acknowledged that there was general agreement that premiums have increased because of increased number and cost of PI claims. Frustratingly, it then concluded that this was due in large part to fraudulent claims and urged the insurance industry to do more to tackle fraud, with Government assistance.

The TSC noted the wide use of referral fees in the industry but declined to express a view on whether they should be banned, calling instead for greater transparency to consumers. The recent calls from The Rt Hon Jack Straw MP for a ban on referral fees may have prompted the TSC's decision to reconvene this inquiry in October 2011.

There were also recommendations around uninsured driving and road safety for young drivers. The TSC concluded by recommending that the Government:

- facilitates the investigation of effective use of new technology to assess driving standards in younger drivers; and
- sponsors research into international experience in "restraining the number of personal injury claims relating to motor insurance".

## 4. Civil Procedure Rules

Set out below are some of the key changes to the CPR over the last 12 months, together with summaries of other guidance and related developments.

### 53rd CPR Update

This Update came into force on 1 October 2010. The key changes included:

#### Electronic Disclosure

A new Practice Direction on the Disclosure of Electronic Documents (PD 31B) and an accompanying Electronic Documents Questionnaire were introduced, aimed at encouraging the parties to reach agreement on proportionate and cost-effective disclosure of electronic documents.

- It applies to proceedings started on or after 1 October 2010. (However, judges have the discretion to apply it to proceedings commenced before that date, as occurred in *Goodale v MoJ.*)
- It applies to multi-track proceedings. (Again, the court has the discretion to apply it to fast track cases if it is clear that electronic documents will be extremely relevant.)
- The purpose is "to encourage and assist the parties to reach agreement" on proportionate and cost-effective disclosure of electronic documents.
- The issues relating to electronic disclosure and technology must be considered and discussed at an early stage. In some cases this may be before proceedings have even begun.
- The use of the Electronic Documents Questionnaire attached to the Practice Direction is optional but the court can order the parties to complete the questionnaire where agreement is not reached or the agreement is inappropriate.

To the extent that insurers may themselves be party to litigation they need to consider:

- ensuring they have a current data map of all their electronic sources;
- reviewing/implementing their document retention policy and the mechanisms for communicating preservation of documents and their collation;
- appointing an IT manager/claims handler/in house counsel/dedicated team as the point of reference for all electronic disclosure requests; and
- training for claims staff.

In as far as insureds will have to handle electronic disclosure, insurers could consider:

- imposing obligations on their own insureds; and/or
- providing them with assistance.

The dicta of His Honour Judge Simon Brown QC in last year's case of *Earles v Barclays Bank Plc* sums up the current position: "One expects a major [organisation] in this day and age ... to have an efficient and effective information management system in place to provide identification, preservation, collection, processing, review analysis and production of its [electronically stored information] in the disclosure process..."

### **55th CPR Update**

The key changes which came into effect from 6 April 2011 were:

#### **Part 6 Service of Documents and PD6B - Service out of the Jurisdiction**

Amendments allow the address of a European Lawyer in a European Economic Area (EEA) state or, for a litigant in person, the litigant's normal residence or place of business in the UK, or failing that any EEA state, as an address for service.

#### **Part 45 Fixed Costs and Costs Practice Direction**

A new section was inserted to allow the award of fixed costs to HM Revenue and Customs (HMRC) in claims for the recovery of money through a county court where the matter is conducted by an HMRC officer.

#### **Costs Practice Direction**

Amendments were made to clarify how VAT should be treated in relation to payments to a third party that are shown as disbursements by the legal representatives in bills of costs. The amendments ensure consistency with the Criminal Costs Practice Direction.

#### **PD53 Defamation Claims**

The existing provisions were extended to provide for statements in open court to be made in cases of slander and libel only, to include statements to be made in open court following settlement of claims for malicious falsehood and misuse of private or confidential information.

#### **Part 78 and PD78 European Orders for Payment and European Small Claims Procedures**

Amendments were made to implement EU Directive 2008/52/EC (on certain aspects of mediation in civil and commercial matters) to allow enforcement of the content of a written mediation agreement made following a cross-border dispute, whilst maintaining the confidentiality of the agreement.

#### **Pre-Action Protocol for the Resolution of Clinical Disputes**

A minor amendment was made to increase the time for providing a response to a letter of claim. The amendment ensures consistency with other time periods in the protocol.

#### **Pre-Action Protocol for Disease and Illness claims**

This revised protocol includes significant amendments, the aim of which is to make the pre-action process more efficient and to promote the early exchange of information. The main changes include an amendment to the definition of "relevant records" to specify that these include the claimant's GP and hospital records which should be made available to insurers, a requirement for claimants to provide full details of any after-the-event insurance (although there is no requirement to disclose the level of premium) and the provision by claimants of a chronology of relevant events including dates and periods of exposure, backed up by a HM Revenue and Customs employment history. Where the chronology discloses more than one employer, the claimant must identify any relevant exposure during each period of employment or self-employment. Details should also be provided of any claims/payments made under the Pneumoconiosis etc (Workers Compensation) Act 1979. The protocol also now recognises that expert evidence may be required on apportionment issues.

There is no separate mesothelioma pre-action protocol, as originally envisaged, but this update includes provision for an "early notification letter" prior to the letter of claim in mesothelioma cases. The amendments to the Disease Protocol should assist in determining contributions and coordinating settlement, thus speeding up the claims process in disease cases.

### **56th CPR Update**

This update is due to come into force in October 2011 and the following relevant changes to the rules and practice directions will be introduced as part of the update:

#### **Part 36**

Part 36 will be amended to reverse the effect of *Carver v BAA*, as recommended by Lord Justice Jackson in his Review of Civil Litigation Costs. It was felt the decision should be reversed on the basis that it introduced an unwelcome degree of uncertainty into the Part 36 regime when a court had to determine whether a judgment was equal to or better than an offer to settle made by one of the parties. The meaning of "more advantageous" and "at least as advantageous" in relation to any money claim or money element of a claim is clarified such that "more advantageous" is defined as "better in money terms by any amount however small". The amendment will apply to offers to settle made on or after 1 October 2011.

#### **Part 6 Service**

The rules relating to service of documents will be amended to enable the address of a solicitor in Scotland or Northern Ireland to be provided as an address for service. Also further minor amendments are made consequential on changes made in Practice Directions to enable claimants in Scotland and Northern Ireland to issue claims through the Claim Production Centre, Money Claim Online and Possession Claims Online services. These amendments are effective from 1 September 2011.

#### **Litigants in Person and witnesses and parties in small claims – Increase of Recoverable Rates**

Practice Direction 27 and the Cost Practice Directions (PD43-48) will be amended to increase the rates that litigants in person can recover for financial loss through spending time on legal work. The prescribed rate of a maximum of £50 per day for attendance at court for a small claim is to be increased to £90.

#### **Extension of Pilot Schemes**

Several pilot schemes have been put in place by the Ministry of Justice, aimed primarily at improving costs and case management. The following schemes will be extended:

##### **Automatic Orders Pilot Scheme**

This scheme, which was extended until 30 September 2011 by the 56<sup>th</sup> Update, is further extended to 31 March 2012.

##### **Costs Management in Mercantile Courts and TCC Pilot Scheme**

A new PD 51G extends the costs management pilot scheme which has been running in Birmingham to all Mercantile Courts and Technology and Construction Courts. The scheme will operate from 1 October 2011 to 30 September 2012 and will apply to proceedings in which the first case management conference is heard on or after 1 October 2011.

##### **Defamation Proceedings Costs Management Scheme**

This scheme will be extended until 30 September 2012.

##### **County Court Provisional Assessment Pilot Scheme**

This scheme will be extended until 30 September 2012.

## Pre-Action Protocol for Low Value Personal Injury Claims in RTAs

Effective from 1 October 2011, minor amendments are to be made to paragraph 7.55 which specifies the information to be sent to the court in the Court Proceedings Pack (Part A and Part B) Form, where the parties fail to reach an agreement.

## Practice Direction 51F– Non-disclosure Injunctions Information Collection Pilot Scheme

This PD provides for a pilot scheme for the recording, and transmission to the Ministry of Justice for analysis, of certain data in relation to injunctions prohibiting publication of private or confidential information. The purpose of the scheme is to enable the Ministry of Justice to collate and publish, in anonymised form, information about applications for injunctions where section 12 of the Human Rights Act 1998 is engaged. The pilot scheme will operate from 1 August 2011 to 31 July 2012.

## County Court Closures

A Practice Direction is introduced to set out the procedure for the transfer of work from a county court prior to its closure for civil, family and insolvency proceedings.

## Part 36 Offers Guidance

Last year the Court of Appeal gave guidance as to the changes in Part 36 in *Gibbon v Manchester City Council*. The interpretation of CPR 36.9(2) is that a Part 36 offer can be accepted "at any time" and CPR 36.10 (1) provides that where an offer is accepted the claimant will be entitled to costs up to the date of acceptance. A Part 36 offer can be accepted by a party at any time unless notice is given in writing of the withdrawal of the same prior to acceptance.

The Court of Appeal had this year to clarify the position on whether a time limit imposed on an offer did not afford a party the protection of Part 36. In *C v D*, the claimant's letter was headed "Offer under CPR Part 36" and an offer was made which stated "this offer will remain open for 21 days". The claimant refused to accept the defendant's acceptance made nearly a year later on the grounds that the offer had automatically lapsed.

The court found that although a time limited offer was not consistent with Part 36, in this case all that "open for 21 days" meant was that the offer would not be expressly withdrawn in that period. A Part 36 offer can only be withdrawn within the 21 day period with the permission of the court. An offer in such terms put the opponent on notice that the offer could be withdrawn after the 21 day period but until then remained on the table for acceptance subject to the costs consequences of Part 36.

However under CPR 36.10(5) the court retains discretion to disallow the costs consequences as it did for a litigant in person in accepting an offer well out of time on receiving a reminder that the offer had been made (*Kunaka v Barclays Bank*) and allowing an infant not to have to pay the costs for a late acceptance when it had not been possible for his solicitor to assess quantum at the time the offer was made (*Thompson v Bruce*). This recent High Court case found that Part 36 offers made pre-issue of proceedings had the same consequences as under CPR 36.10.

The criticism of the decision in *Carver v BAA*, including Lord Justice Jackson reporting the decision as wrong and that it should be overturned, has led to the change to Part 36 coming into force on 1 September 2011 (see above).

In *Carver*, the court found under the new wording of Part 36 that it could now exercise a wider review of all of the circumstances of the case in deciding whether the judgment was worth the fight. In *Carver* the starting point was:

"The issue in this appeal boils down quite simply to this: if a claimant beats a payment of money into court by a modest amount, even £1, has she obtained a judgment more advantageous than the defendant's Part 36 offer or is the court entitled to look at all the circumstances of the case in deciding where the balance of advantage lies?"

Where a claim for £20,000 was made and the claimant beat a Part 36 offer of £4520 by £51 the court decided the extra amount obtained was not worth the fight and in real terms the defendant was the winning party who were awarded the costs post the offer.

The change in the rule now states that any amount no matter how small that a is more than an offer made is "more advantageous" so the starting point will always be that the claimant is the winning party if the court awards any amount over a defendant's Part 36 offer. In order to avoid possible orders for costs on the indemnity basis and enhanced interest, the defendant will have to persuade the court it is unjust to make such orders. Under the amended rule, it is probable that the decision in *Carver* would have been a lot different and the bar to avoid an order for costs in such circumstances is now a lot higher.

## Other

### RTA Portal

Following the formal introduction of the RTA Portal on 30 April 2010, experience of the new RTA Process for personal injury claims is beginning to throw up legal issues. Claims for After the Event (ATE) insurance premiums have been managed at relatively low levels to date, but at least one court decision (*Watson v Johnson*, Wrexham County Court May 2011) has allowed a higher premium.

There is an issue as to whether all claimants' solicitors are required to use the Portal itself for notifying claims. On 7 June 2011 Deputy District Judge McDonald, sitting in Bury County Court, held that there was no requirement for the Claim Notification Form (CNF) to be submitted via the portal. She held that fax was an electronic means of transfer and service of the CNF by fax was therefore compliant with the protocol. Having made that finding it followed that insurers, who had refused to deal with the CNF as it had not been submitted via the Portal, were in breach of the protocol and costs were awarded on the standard basis.

In a similar case heard in Chichester County Court in April 2011 the District Judge reached the same conclusion. That decision was reported via the APIL newsletter and has since been relied on by some claimant solicitors as sufficient basis not to use the Portal.

Both of these cases involved Hughes Walker Solicitors. They have intermittently chosen to submit CNFs via the portal but now mainly use fax, relying now on these two decisions. The Bury decision (*Pilkington & Gledhill v Beales*) has been appealed and the application for permission to appeal and appeal are listed to be heard before HHJ Stewart QC in Manchester County Court on 10 October 2011.

### New Business Court

HM Courts & Tribunals Service (HMCTS) has published a notice confirming that practical completion of the new business court was achieved on 29 July. Known as the Rolls Building, the court will bring together the Chancery Division (including the Bankruptcy and Companies Court), the Admiralty and Commercial Courts, and the Technology and Construction Court. Subject to fitting out works and moves going to plan, HMCTS hopes that most, if not all, trials listed for the three jurisdictions should be able to proceed in the Rolls Building from the beginning of the new term. Planned dates are as follows:

The Admiralty and Commercial Court and the Technology and Construction Court are expected to be fully operational in the Rolls Building from 26 September 2011.

The Chancery Division (save for the Bankruptcy and Companies Court) will open in the Rolls Building on 10 October 2011.

The Bankruptcy and Companies Court will open in the Rolls Building on 20 October 2011.

### PD 52 – Appeals

There has been a further delay in implementing the revised PD for Appeals. A subcommittee of the CPR committee has been appointed to reconsider the PD with a view to making it shorter and more succinct.

#### **Pre-Action Protocols**

The Pre-action Protocol Working Party aims to make recommendations to the Civil Justice Council regarding reform of various pre-action protocols by October 2011.

#### **Contempt of Court and Habeas Corpus**

The CPR Committee's intention to transfer existing rules on committal for contempt of court from the RSC to the CPR is still in the pipeline, with the aim of bringing the changes into force towards the end of 2011.

## 5. A View From Singapore

Beachcroft opened its first office in Asia earlier this year as an extension of its Specialist & International Risk Group based in its London City Office. We are therefore pleased, for the first time in our Market Conditions Report, to include a brief update on the most significant developments in the Singapore Insurance/Reinsurance market this year.

### Insurance Market Growth

The year to 31 December 2010 saw continued increases in gross written premium in the Singapore Market.

The Singapore Insurance Fund (SIF), which broadly comprises all domestic Singaporean underwriting, grew by 10%, with GWP at S\$3.2 billion.

The Off-shore Insurance Fund ("OIF"), which broadly comprises underwriting of overseas risk, grew by 19%. GWP was S\$5.4 billion, split S\$1.4 billion of direct insurance, S\$3 billion of reinsurance and S\$928 million of captive underwriting.

Despite recent global economic turmoil and the threat of a double dip recession in North America and the EU, and despite also the soft market conditions that persist in Asia even after the recent spate of catastrophes, continued growth in regional economies such as Indonesia and Thailand as well as the continued double digit growth in China (Singapore itself is forecast to grow between 5 and 6 % in 2011) is expected to fuel further growth in both SIF and OIF in 2011 and beyond.

Although there have been market liberalisation measures and development of the industry in other nearby economies (Vietnam has introduced reforming legislation this year and there is meaningful growth in Malaysia - particularly in Islamic insurance, known as takaful) Singapore still leads the SE Regional Market outside of greater China (People's Republic of China, Hong Kong and Taiwan).

### Major Losses

The Japanese earthquake and tsunami has had a major impact on the Singapore Market this year. Like the London Market, involvement of Singaporean insurers/reinsurers in domestic Japanese risk is predominantly via reinsurance programmes. The largest impact, therefore, has been on reinsurers.

A significant ex-Japan impact, however, has been on Asian manufacturers and distributors/exporters who rely upon Japanese manufactured products and components. Similarly, Japan itself is an important market for regional manufacturers. Significant business interruption (BI) claims are expected under supplier and/or customer extensions to business interruption policies.

Those claims will not be straightforward. The traditional cover under such "contingent" BI insurance is in respect of interruption to business caused by damage to property at the customer's/suppliers premises. How far that cover extends to interruptions caused by power cuts, denial of access under the Fukushima nuclear exclusion zone, de-population, "loss of attraction" or the general slump in the Japanese economy following the tragic events will vary from case to case.

In addition to the catastrophe in Japan, 2010/11 has also seen major earthquakes in Christchurch, New Zealand and severe floods and then a cyclone in Queensland, Australia, all of which have had an impact on many of the Asia-Pacific regional insurers/reinsurers based in Singapore.

## 6. Cases

### Abuse

- BJM v Nathan Eyre and others
- EB v John Haughton
- Raggett v (1) Society of Jesus Trust 1929 for Roman Catholic Purposes (2) Preston Catholic College Governors (CA)
- Roman Catholic Church vicarious liability preliminary issue
- Various Claimants v Catholic Child Welfare Society & Others (CA)

### Asbestos

- Asmussen v Filtrona UK Ltd
- Chandler v Cape Plc
- Currie v (1) Rio Tinto plc (2) Royal Mail (3) Lines Ltd (4) NDLB (5) Canadian Pacific (UK) Ltd
- EL Trigger Litigation - Thomas Bates & Sons Ltd v BAI (Run-off) Ltd (CA); MMI v Zurich
- Ivan Hinchliffe (Executor of the Estate of Aubrey Whitehead, deceased) v Corus UK Ltd
- Knowsley MBC v Willmore (SC)
- Sienkiewicz v Greif (UK) Ltd (SC)
- Williams v University of Birmingham (CA)

### Catastrophic Injury

- Alyson Booker v NHS Oldham & Direct Line

### Causation

- Chubb Fire Ltd v Vicar of Spalding & Another (CA)
- Global Process Systems v Syarikat Takaful Malaysia Berhad (SC)
- Norris v Merial Animal Health Ltd

### CFAs

- MGN Ltd v UK (ECHR)
- Sousa v Waltham Forest LBC (CA)
- Yao Essaie Motto & Others v Trafigura Ltd & Another

### Civil Liability (Contribution) Act

- Jubilee Motor Policies Syndicate 1231 v Volvo Truck & Bus (Southern) Ltd
- Mouchel Ltd v Van Oord (UK) Ltd (no 2)

### Conflict of Laws

- Homawoo v GMF Assurance SA and Others
- Jacobs v MIB (CA)
- Robert Bacon v Nacional Suiza Cia Seguros Y Reseguros SA

### Concurrent Liability

- Robinson v P E Jones (Contractors) Ltd (CA)

### Corporate Manslaughter Act

- R v Peter Eaton & Cotswold Geotechnical Holdings Ltd//Prosecution of Lion Steel Ltd

### Credit Hire

- Chen Wei v Cambridge Power and Light Ltd
- W v Veolia Environmental Services (UK) PLC

### Defective Premises Act

- Jenson v Faux (CA)

### Double Insurance

- SHC Capital Ltd v NTUC Income Insurance Co-Operative Ltd

### Economic Loss

- Linklaters Business Services v Sir Robert McAlpine Ltd & Others
- Network Rail Infrastructure Ltd v Conarken Group Ltd (CA)

### EL/PL

- Dalton v NCC (CA)
- Desmond v Chief Constable of Nottinghamshire (CA)
- Dowson v Chief Constable of Northumbria
- Kim Ali v City of Bradford Met DC (CA)
- Scout Association v Mark Barnes (CA)
- Uren v Corporate Leisure (UK) Ltd and Others (CA)

### Experts

- Axa v Allianz Insurance Plc and Others
- Edwards-Tubb v JD Wetherspoon Plc (CA)
- Jones v Kaney (SC)

### Fire

- Harooni and (2) Federal Motors v Rustins Ltd
- Maritsave Ltd v NFU Mutual Insurance
- (1) Trebor Bassett Holdings Ltd and (2)The Cadbury UK Partnership v ADT Fire and Security Plc

### FOS

- Andrews v SBJ Benefit Consultants

### **Fraud**

- Aviva Insurance Ltd v Roger George Brown
- Daniel Locke v James Stuart and AXA
- Edward William Nield and Acromas Insurance Co Ltd v Graham Loveday and Susan Loveday
- Goldsmiths Williams v Travelers Insurance Company Ltd
- Imtiaz Ahmed v Steven Elliott and Road Range Accident Assistance
- Joseph Fielding Properties (Blackpool) Ltd v Aviva Insurance Ltd
- Noble v Owens
- Sharon's Bakery (Europe) Ltd v (1) Axa Insurance UK Plc (2) Aviva Insurance Ltd
- Yeganeh v Zurich Plc (CA)
- Zurich Insurance Co Plc v Hayward (CA)

### **Gender Directive**

- Test Achats test case (ECJ) – see Regulations, Directives and Other Guidance section

### **Legal Expenses**

- Stark v DAS Osterreichische Allgemeine Rechtsschutzversicherung AG (ECJ)

### **Limitation**

- AB v MOD, The Nuclear Test Veterans Litigation (CA)
- Renwick v Simon & Michael Brooke Architects & Others

### **Motor**

- Churchill Insurance Co Ltd v Wilkinson (ECJ)

### **Noise Induced Hearing Loss**

- Baker v Quantum Clothing Group (SC)

### **Non-Disclosure**

- Garnat Trading and Shipping (Singapore) Ltd & Another v Baominh Insurance Corporation (CA)
- Sugar Hut Group Ltd & Others v Great Lakes Reinsurance (UK) Plc & Others
- Synergy Health (UK) Ltd v CGU Insurance Plc & Others

### **Nuisance**

- Barr and others v Biffa Waste Services Ltd

### **Occupiers Liability Act 1957**

- Furmedge and others v Chester le Street DC

### **Part 36**

- See Civil Procedure Rules section

### **Payment Protection Insurance**

- R (on the application of British Bankers' Association) v FSA and FOS

### **Policy Coverage**

- AXL Resources Ltd v Antares Underwriting Services Ltd
- Ground Gilbey Ltd and Davey Autos Ltd v JLT
- Land of Leather Group Action
- Teal Assurance Co Ltd v (1) WRB (2) Aspen Insurance UK Ltd

### **Privilege**

- Akzo Nobel Chemicals and Akros Chemicals v Commission (ECJ)
- R (on the application of Prudential Plc and Prudential (Gibraltar) Ltd) v Special Commissioner of Income Tax & Others (CA)

### **Professional Indemnity**

- Brown v InnovatorOne Plc
- D Morgan Plc v Mace & Jones (a firm)
- (1) Haugesund Kommune (2) Narvik Kommune v (1) Depfa ACS Bank (2) Wikborg Rein & Co (CA)
- Lexi Holdings Plc (in administration) v DTZ & Others
- Safeway Stores Ltd & Ors v Twigger & Ors (CA)
- Scullion v Bank of Scotland Plc (t/a Colleys) (CA)

### **SHE**

- R v Tangerine Confectionary Ltd and R v Veolia (CA)
- Threlfall v Hull City Council (CA)
- Wandsworth London Borough Council v Covent Garden Market Authority

### **Stress & Harassment**

- Dermott v London Borough of Harrow
- Iqbal v Dean Manson Solicitors (CA)
- Jones & Lovegrove v Ruth & Ruth (CA)
- Mitton & Others v Benefield & Another

### **Third Parties (Rights Against Insurers) Act**

- Omega Proteins Ltd v Aspen Insurance UK Ltd

### **VAT**

- Barratt, Goff and Tomlinson v The Commissioners for Her Majesty's Revenue & Customs

### **Without Prejudice Negotiations**

- Oceanbulk Shipping and Trading v TMT Asia Ltd & Others (SC)

**Beachcroft LLP  
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